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## Proliferation of FTAs a Challenge to the WTO?

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Free trade agreements (FTA) between two or more countries go contrary to the multilateral or global approach that is espoused by the World Trade Organisation (WTO). However, an impasse in negotiations for a multilateral agreement to date, has prompted more countries to sign FTAs on a bilateral or plurilateral basis which is of concern to the WTO.

Singapore Management University's School of Law organised a joint seminar in which two eminent WTO experts updated the audience on the organisation and issues related to the proliferation of FTAs and the implications for the world trading system. The speakers were William Davey, chair emeritus (College of Law, University of Illinois) and former director, Legal Affairs Division, WTO Secretariat, and Mitsuo Matsushita, professor emeritus, (University of Tokyo) and a founding member of the WTO Appellate Body. The appellate body is the highest judicial authority in the WTO dispute settlement system available to members involved in trade disputes.

According to Matsushita, there has been a large increase in the number of FTAs or preferential trade agreements (PTAs) from 27 in 1990 to 205 last year. He gave examples of different types of FTAs, some through direct negotiations between two or more countries while others were initiatives of regional blocs.

### FTAs Fill a Vacuum

Why the proliferation of FTAs? According to Matsushita, "Businesses relocate for a number of reasons from seeking lower production costs or environmental reasons to securing natural resources and market access." They must continue to function and grow with or without WTO agreement. As businesses expand or relocate outside their home base, governments need to be proactive in seeking FTAs with other countries which attract foreign direct investments (FDI), he explained.

In contrast to a multilateral system, negotiations for FTAs are relatively easy, facilitated by geographical and cultural proximity as well as common economic interests, Matsushita said. He cited Japan's first FTA with Singapore in 2002 which led subsequently to agreements with other ASEAN members (Malaysia, Thailand, Indonesia, Vietnam), as well as other countries (South Korea, Mexico, Australia, India, Switzerland). For example, he said, "Between 1999 and 2004, Japanese direct investment in Asia grew from 7% of total FDI to top 40% whereas Japanese exports to Asia increased from 49% to 51%."

Focusing on the historic pact between Japan and Singapore, he said it had gone beyond the FTA dimension to an economic partnership agreement (EPA). In addition to tariff reductions, rules of origin, simplification of customs procedures, and mutual recognition of technical standards for specific sectors, the EPA facilitates the movement of people and promotion of investment, intellectual property and mutual support of small enterprises.

The relationships between the WTO and FTAs are, therefore, rather complex. He added there is tension between the two systems -- multilateral versus bilateral or plurilateral -- but nonetheless there are some areas of complementarity. "For example, many of the FTAs touch on other issues that are not covered by the WTO such as competition policy and environmental protection rules which should be useful to supplement trade liberalisation," he said.

Matsushita highlighted some of the peculiarities in trade negotiations. For instance, in the case of environmental protection, a mere level playing field approach is not sufficient unless accompanied by technical, financial and human resource assistance. In some FTAs, there could be stipulations that each party to the negotiation would not seek FDI through lax environmental protection.

"Although many FTAs may refer to the same terms, there is great variety in their definitions and applications of tariff rules, trade remedies and also determinations remain on the relationship between dispute settlement procedures in the WTO and those in FTA," he continued.

According to Matsushita, with the surge in the number of FTAs, the different interpretations of rules of trade increase the complexity and confusion, leading sometimes to higher transaction costs. Furthermore, such differences create unequal conditions for industries located in areas that may be covered by different FTAs. He added that there is a need, eventually, for stock-taking, harmonisation, and convergence of procedures and substantive rules.

"Granted the myriad definitions and rules, the bottom line is that FTA rules will be overtaken by WTO rules as long as they overlap," Matsushita stated. He added that there will inevitably be some portions touched upon by FTAs that

are not covered by the multilateral rules of the WTO. These will stay even if multilateral negotiations are successful.

## WTO Beginnings

In a sense, the success of FTAs is a reflection of the failure of WTO members to reach accord at the multilateral level. The WTO came into being in 1995 as a global trade body charged with the mission to ensure that countries can effectively participate in world trade. It takes a near global approach in that multilateral agreement and consistency of rules, together with dispute settlement principles, will facilitate trade worldwide.

The Seattle meeting in 1999, which attracted a storm of protests, damaged the credibility of the WTO, said Davey. It subsequently led to the WTO launching the current round of negotiations at the ministerial meeting at Doha in 2001 to discuss what is known as the Doha Development Agenda (DDA). Taking into account the Seattle issues, the DDA includes goals to bring about benefits to developing countries.


Despite the many rounds of negotiations, there remains a chasm between the developed nations and bigger developing countries. The impasse is over outstanding issues and concerns about agricultural subsidies, agricultural tariffs, industrial tariffs, services and market openings. Developing countries have deep reservations about opening up their markets, especially raw materials, to developed countries which are reluctant to reduce or remove their farm subsidies.


## Three Challenges

Looking ahead, Davey sees three challenges for the WTO. The first involves its credibility, the second is the proliferation of FTAs or preferential treatment agreements (PTAs), and the third, the effective functioning of the organisation's dispute settlement responsibilities.

His view on achieving credibility is that the WTO does not oversell itself. "It has to repair the damage from 1999 because the organisation is not much loved." The test for the WTO is to ensure an outcome that would provide significant market access for member countries. As for the long-drawn negotiations, he added that the previous trade body before the WTO took 12 years to reach multilateral agreement. National elections at various times, and different topical issues taking centre-stage also had an impact on the decision making process of member countries in the multilateral negotiations, he said.

The preferential treatment provided in PTAs is against the most favoured nation and non-discriminatory principle of the multilateral system, he said. Davey also expressed concern about the growth in PTAs because poorer countries, especially from Africa, are excluded from such agreements. The other implications of PTAs are that they make international trade more complicated because there are too many rules between different agreements, he said.

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